For SB 223 – Carol Juneau

46-1-401. Penalty enhancement -- pleading, proof, and mental state requirements. (1) A court may not impose a penalty enhancement specified in Title 45, Title 46, or any other provision of law unless:

(a) the enhancing act, omission, or fact was charged in the information, complaint, or indictment, with a reference to the statute or statutes containing the enhancing act, omission, or fact and the penalty for the enhancing act, omission, or fact;

(b) if the case was tried before a jury, the jury unanimously found in a separate finding that the enhancing act, omission, or fact occurred beyond a reasonable doubt;

(c) if the case was tried to the court without a jury, the court finds beyond a reasonable doubt that the enhancing act, omission, or fact occurred; and

(d) a defendant who knowingly and voluntarily pleaded guilty to an offense also admitted to the enhancing act, omission, or fact.

(2) The enhancement issue may be submitted to a jury on a form separate from the verdict form or may be separately stated on the verdict form. The jury must be instructed that it is to reach a verdict on the offense charged in the information, complaint, or indictment before the jury can consider whether the enhancing act, omission, or fact occurred.

(3) An enhancing act, omission, or fact is an act, omission, or fact, whether stated in the statute defining the charged offense or stated in another statute, that is not included in the statutory definition of the elements of the charged offense and that allows or requires a sentencing court to add to, as provided by statute, a penalty provided by statute for the charged offense or to impose the death penalty instead of a statutory incarceration period provided by statute for the charged offense. Except as provided in subsection (4), the aggravating circumstances contained in 46-18-303 are enhancing acts, omissions, or facts.

(4) Use of the fact of one or more prior convictions for the same type of offense or for one or more other types of offenses to enhance the penalty for a charged offense is not subject to the requirements of this section. **History:** En. Sec. 1, Ch. 524, L. 2001; amd. Sec. 1, Ch. 154, L. 2003.

46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and the judge determines, based on the findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination. **History:** En. 95-2206.18 by Sec. 14, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.18; amd. Sec. 3, Ch. 322, L. 1979; amd. Sec. 1, Ch. 396, L. 1979; amd. Sec. 2, Ch. 207, L. 1981; amd. Sec. 2, Ch. 327, L. 1981; amd. Sec. 2, Ch. 392, L. 1983; amd. Sec. 1, Ch. 532, L. 1983; amd. Sec. 105, Ch. 370, L. 1987; amd. Sec. 3, Ch. 564, L. 1991; amd. Sec. 46, Ch. 262, L. 1993; amd. Sec. 12, Ch. 125, L. 1995; amd. Sec. 14, Ch. 482, L. 1995; amd. Sec. 8, Ch. 52, L. 1999; amd. Sec. 17, Ch. 483, L. 2007.